



February 7, 2022

## **CB 1-22 - Eating and Drinking Establishments - Healthy Meals for Children**

### **Position: Oppose as Currently Drafted; Amendments Requested**

Dear Councilmembers:

Since the introduction of Council Bill 1-22, we have done additional research on this issue and checked on the availability of related food/beverage products in the marketplace. We have also received feedback from restaurants and industry nutritionists about this legislation.

Although we oppose this bill as introduced, we respectfully request the following amendments to help make this legislation more workable for County restaurants that offer children's meals (see requested amendments attached):

1. **Amendment #1 strikes the nutritional criteria specified in the bill on page 2, lines 16 through 25.**

#### **Rationale:**

*Independent restaurants (local restaurants not associated with a corporate chain/brand) do not have access to the resources needed to calculate the specific nutrition values of their menu items. It can cost thousands to purchase the necessary software, or hire a company, to accurately calculate the nutritional values for even a limited number of menu items. Moreover, independent restaurants do not have the expertise of nutritionists or registered dietitians on staff to ensure that children's meals are compliant with these strict nutrition criteria, which is also necessary when ingredients change due to product availability.*

*It is significantly more feasible for independent restaurants to meet food group criteria (specified on page 3 of the bill) than specific nutrition criteria.*

**NOTE:** *Federal menu labeling law requiring calorie information on menus, and additional nutrition information for menu items to be available upon request, applies only to restaurants and similar retail food establishments that are part of a chain with 20 or more locations. Montgomery County's menu labeling requirement (Montgomery County Code – Chapter 15) also applies only to eating or drinking establishments that are part of a chain with at least 20 locations. It would be overly onerous on independent restaurants to expend resources to calculate specific nutritional values to meet a children's meal requirement, given that they are not subject to federal and county menu labeling requirements for such information.*

2. **Amendment #2 replaces the ½ cup of unfried fruit or unfried vegetables on page 3, line 31 with ¼ cup instead.**

**Rationale:**

*Restaurants often use pre-packaged fruit products to reduce the amount of food waste generated by unused product and to extend the shelf-life. Pre-packaged fruit products (e.g., apple slices, child-sized fruit cups, apple sauce cups or pouches) are most commonly available in sizes less than ½ cup. For children ages 4 to 8, ¼ cup of apple slices contributes about 25% of the daily recommended amount of fruit noted by the USDA MyPlate. For children ages 9 to 13, ¼ cup of apple slices contributes over 15% of the daily recommended amount of fruit noted by USDA MyPlate.*

3. **Amendment #3 strikes the word “juice” from the fruit exclusions on page 3, line 32.**

**Rationale:**

*The USDA’s school meals program and Dietary Guidelines for Americans count 100% fruit juice as a fruit serving. According to the Dietary Guidelines for Americans, 100% juice has no added sugar and can fit into a balanced diet that provides important nutrients for children.*

4. **Amendment #4 expands the default beverage water options on page 4, lines 51 and 52 of the bill to include water, sparkling water or flavored water with no added natural or artificial sweeteners, and removes the restrictions on flavors and carbonation.**

**Rationale:**

*This is standard language regarding allowable water options in many laws/ordinances regarding default beverages for children’s meals. It is also the same language used in the default beverage requirements for children’s meals in Baltimore City and Prince George’s County.*

5. **Amendment #5 strikes the “unflavored” and “with no added natural or artificial sweeteners” restrictions on page 4, lines 53 and 54 to allow for flavored non-fat or 1% milk, or a non-dairy equivalent.**

**Rationale:**

*The 2020-2025 Dietary Guidelines Advisory Committee found that 79% of those ages 9 to 13 that participate in the National School Lunch Program are not meeting the recommended intake of dairy foods. The USDA recently issued a [final rule](#) (published in the 2/7/2022 Federal Register) to allow school systems the option of offering flavored low-fat milk (1%) in the National School Lunch Program as a potential solution to improve milk consumption. This final rule will be in effect for at least two years.*

*In the final rule, USDA states that “Milk is a popular item among children and is an important source of calcium, vitamin D, and potassium—nutrients under consumed by the U.S. population. Flavored milk has received high palatability ratings from children and has been shown to encourage milk consumption among school-aged children. Studies indicate that children drink more flavored milk than unflavored milk, and that flavored milk served in the school meal programs is wasted less than unflavored milk.”*

*Low-fat and fat-free flavored and unflavored milk (in a maximum serving size of 8 ounces) are among the approved beverages for Montgomery County Public Schools.*

6. **Amendment #6 on page 4, lines 55 through 57 replaces the 6-ounce limitation with 8 ounces instead, and also allows for 100% fruit and/or vegetable juice combined with water or carbonated water with no added natural or artificial sweeteners.**

**Rationale:**

*Limiting the serving size of juice and juice/water combinations to 6 ounces creates an unnecessary burden because it would prohibit restaurants from using other commonly available and affordable serving sizes (i.e., 6.75 ounces and 8 ounces). Many juice boxes and pouches are available in 6.75 ounces. And juice bottles are commonly available in 8 ounces. No other state or local law limits such beverages to 6 ounces for children's meals. Similar laws enacted in Baltimore City and Prince George's County also allow 8-ounce serving sizes for such beverages, and Montgomery County should be consistent.*

*Combining 100% fruit juice with water or carbonated water is a way to create an even lower-calorie juice option with less total sugar and without any added sugar. This is consistent with nearly every children's meal default beverage policy we have seen across the country.*

7. **Amendment #7 establishes an effective date of January 1, 2023 for the default beverages requirement; and January 1, 2024 for the healthy children's meal food group options requirement.**

**Rationale:**

*This amendment recognizes and compensates for the operational challenges that most restaurants are still experiencing while trying to navigate the road to recovery from the ongoing COVID pandemic, amid continuing supply chain challenges, rising food/product costs, labor shortages, and challenges associated with the additional restrictions on foodservice disposables that recently took effect in the County.*

*The Prince George's County healthy children's meal law (passed in November 2020) is phased in over 4 years.*

Thank you for your consideration of these appropriate and reasonable amendments.

Sincerely,



Melvin R. Thompson  
Senior Vice-President

attachment

Bill No. 1-22  
Concerning: Eating and Drinking  
Establishments - Healthy Meals for  
Children  
Revised: 12/17/2021 Draft No. 3  
Introduced: \_\_\_\_\_  
Expires: \_\_\_\_\_  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Rice  
Co-Sponsors: Council President Albonoz and Councilmember Jawando

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**AN ACT** to:

- (1) require children's meals offered by food service facilities to include certain healthy food and beverage options; and
- (2) generally amend the law regarding eating and drinking establishments.

By adding

Montgomery County Code  
Chapter 15, Eating and Drinking Establishments  
Section 15-15C

**Boldface**  
Underlining  
[Single boldface brackets]  
Double underlining  
[[Double boldface brackets]]  
\* \* \*

*Heading or defined term.*  
*Added to existing law by original bill.*  
*Deleted from existing law by original bill.*  
*Added by amendment.*  
*Deleted from existing law or the bill by amendment.*  
*Existing law unaffected by bill.*

*The County Council for Montgomery County, Maryland approves the following Act:*

Sec 1. Section 15-15C is added as follows:

**Sec. 15-15C. Healthy Meals for Children.**

(a) Definitions. In this Section, the following terms have the meanings indicated.

Children's meal means a combination of food items, or a combination of food items and a beverage, that a food service facility:

(1) offers for sale as a unit; and

(2) includes on its children's menu, or otherwise offers for consumption primarily by children.

Children's meal does not include a combination of food items, or a combination of food items and a beverage, prepackaged and offered for sale by an entity other than a food service facility.

Default beverage means a beverage that a food service facility provides automatically with a children's meal, unless the customer requests a different beverage.

Healthy children's meal means a children's meal that contains no more than:

(1) 600 calories;

(2) 700 milligrams of sodium;

(3) 35% of calories from total sugars;

(4) 35% of calories from fat;

(5) 10% of calories from saturated fat; and

(6) 0.5 grams of trans fat.

Lean protein means a serving of protein that contains 10% or less in saturated fat.]

(b) Children's meals – healthy option required. A food service facility that offers for sale a children's meal must offer for sale at least one healthy children's meal.

(c) Healthy children's meals – options. The healthy children's meal required under subsection (b) must include two or more of the following options:

(1) ~~1/2~~ 1/4 cup or more of unfried fruit or unfried vegetables, excluding juice, condiments, or spreads;

(2) a whole grain product that:

(A) contains, by weight, 51% or more of whole grain ingredients; or

(B) lists whole grain as the first ingredient in its ingredient list required by the U.S. Food and Drug Administration; or

(3) A lean protein consisting of:

(A) one ounce or more of meat, seafood, nuts, seeds, beans, or peas;

(B) one egg;

(C) 1/2 cup of nonfat or 1% milk or low-fat yogurt, or 1 ounce of reduced fat cheese; or

(D) a plant-based, nondairy alternative that:

(i) contains the same amount of protein as, or more protein than, an item under this paragraph; and

(ii) is fortified with calcium and Vitamin D.

(d) Children's beverages – healthy default beverage required. A food service facility that offers for sale a children's meal with a beverage must include as the default beverage one or more of the following options:

(1) water, **sparkling water, or flavored water** with no added natural or artificial sweeteners, **flavors or carbonation**];

(2) 8 ounces or less of **unflavored** nonfat or 1% milk, or a non-dairy equivalent **[with no added natural or artificial sweeteners]**; or

(3) **[6] 8 ounces or less of 100% fruit or vegetable juice, [or] a**

**combination of 100% fruit and vegetable juice, or 100% fruit and/or vegetable juice combined with water or carbonated water with no added natural or artificial sweeteners.**

(e) *Preservation of consumer choice.* This Section must not be construed to prohibit a customer from purchasing, or a food service facility from selling, a children's meal that:

(1) is not a healthy children's meal; or

(2) does not contain the foods or beverages listed under subsections (c) and (d).

(f) *Educational outreach.* The Director must create and disseminate written informational resources and signage that summarizes, in multiple languages including Spanish, the requirements of this Section.

**Sec. 2. Effective [Date] Dates.** **[ This Act must take effect 6 months after it becomes law] The healthy default beverage requirement of this Act takes effect January 1, 2023. The healthy children's meal requirement of this Act takes effect January 1, 2024.**